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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In Matter of ) WT DOCKET NO. 94-147  
)  
JAMES A. KAY, JR. )  
)  
Licensee of one hundred sixty )  
four Part 90 licenses in the )  
Los Angeles, California area. )

**O R D E R**

Issued: February 13, 1996 ; Released: February 15, 1996

This is a ruling on Motion To Strike Wireless Telecommunications Bureau's Reply To Opposition To Motion For Summary Decision And Order Revoking Licenses that was filed by James A. Kay, Jr. ("Kay") on January 26, 1996. An Opposition was filed by the Wireless Telecommunications Bureau ("Bureau") on February 8, 1996.

On January 11, 1996, in a telephone conference call, the Presiding Judge granted the Bureau leave to file a Reply To Kay's Opposition to the Bureau's pending Motion For Summary Decision. The ruling was memorialized in Order FCC 96M-1, released January 18, 1996. The Presiding Judge was interested in having a complete and accurate accounting of the operative facts pertaining to the Section 308 issue which is the subject of the Bureau's Motion For Summary Decision. The Bureau indicated an interest in filing a Reply. The Presiding Judge acted in his discretion in receiving the additional pleading. 47 C.F.R. §1.294(d).

Kay asserts that the Presiding Judge was only concerned with "misrepresentations" and Kay now argues that the Bureau's Reply went too far and should be stricken. Actually, the concern was as much for completeness as it was for accuracy. That is why Kay was authorized to seek leave to file a Reply on Kay's Motion For Partial Summary Decision which had also addressed the Section 308 issue. Order FCC 96M-1, supra.

Kay cites §1.45(b) of the Commission rules which provides that "a reply shall be limited to matters raised in the oppositions...." A reading of the Bureau's Reply pleading indicates that the matters argued by the Bureau relate to Kay's Opposition. Both pleadings are concerned with the operative facts surrounding the Bureau's Section 308(b) request and the requirement for disclosure of requested information and the sanction of revocation for violations. In Kay's Motion To Strike he also argues that the Bureau took advantage of the authorized Reply pleading to assert a new theory based exclusively on Section 308 and abandoning allegations of the wrongful withholding of discovery as a ground for summary decision. Kay further argues that the Bureau's assertion in its Reply that "Kay was required to report the number of mobile operating units operating on each of his stations and to attribute each mobile unit to a specific station" was a mischaracterization of the Bureau's interrogatory request. Kay also makes the argument that he has continuously taken the position (both in his immediate responses to the

Bureau's Section 308 request of January 1994 and after the Show Cause Order was issued) that the Section 308 request was overly broad because it required Kay to produce confidential business information. As a result of the excesses perceived in the request, Kay challenged it on the advice of counsel. However, Kay notes that he dropped these objections after the Presiding Judge overruled the arguments in ruling on the Bureau's Motion To Compel (Order FCC 95M-203, released October 31, 1995). Kay contends that he has answered the Order "unequivocally to the best of his knowledge." Kay also contends that he has no obligation to assemble data on loading that is not contained in his business records.

These are arguments which Kay has raised in his Opposition to the Bureau's Motion For Summary Decision which he filed on January 11, 1996. He also revisits certain of these same points in a Bench Memorandum handed up by Kay's counsel at argument on the Motion For Summary Decision conducted on January 31, 1996.<sup>1</sup> The arguments of Kay will be addressed in the Presiding Judge's ruling on the Motion For Summary Decision. As for the issue under consideration here, there has been no showing that the Bureau acted improperly by the scope of its Reply pleading. The Bureau has delineated in a paragraph by paragraph showing that it was addressing the Opposition when it filed its authorized Reply on January 22, 1996.

Accordingly, IT IS ORDERED that the Motion To Strike Wireless Telecommunications Bureau's Reply To Opposition To Motion For Summary Decision And Order Revoking Licenses that was filed on January 26, 1996, by James A. Kay, Jr., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge

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<sup>1</sup> The Presiding Judge granted permission for Kay to file the Bench Memorandum after it was handed up at the conference. Neither the Judge nor the Bureau knew that it was coming. The Bureau has filed a Consolidated Response to the matters in Kay's Memorandum and the Motion To Strike which is under consideration here.